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IN THE

Supreme Court of the United States

ABIGAIL NOEL FISHER,
Petitioner,

v.

UNIVERSITY OF TEXAS AT AUSTIN, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF LT. GEN. JULIUS W. BECTON, JR., GEN. JOHN P. ABIZAID, ADM. DENNIS C. BLAIR, GEN. BRYAN DOUG BROWN, GEN. GEORGE W. CASEY, LT. GEN. DANIEL W. CHRISTMAN, GEN. WESLEY K. CLARK, ADM. ARCHIE CLEMINS, GEN. ANN E. DUNWOODY, GEN. RONALD R. FOGLEMAN, ADM. EDMUND P. GIAMBASTIANI, JR., ET AL., AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTEREST OF *AMICI CURIAE*	1
SUMMARY OF THE ARGUMENT	1
ARGUMENT	6
I. Growing and Maintaining a Highly Qualified, Diverse Officer Corps Will Always Be A U.S. National Security Imperative	6
A. The U.S. military's commitment to racial diversity in its leadership grew out of many decades of experience	7
B. The post-September 11, 2001 operational environment underscores the Nation's need for officer corps diversity	9
C. Recent events reinforce the military's need for a qualified, racially diverse officer corps that reflects the United States and our fighting force	17
D. The military has made significant strides towards growing a highly qualified and a racially diverse officer corps, but considerable work remains	19
1. The military's strong commitment to officer diversity includes initiatives to increase minority applications and accessions to officer commissioning institutions	21

TABLE OF CONTENTS—Continued

Page

a. Outreach and Recruiting 22

b. Limited Use of Race-Conscious Admissions 24

2. Results to date of the military's initiatives 26

II. Invalidating UT's Modest Race-Conscious Admissions Policy Would Seriously Disrupt the Military's Efforts to Maintain Military Cohesion and Effectiveness 29

A. Our military has a vital interest in admissions policies that directly affect the ROTC, a linchpin for the Nation's incoming military officers 29

B. A robotic top-ten percent class rank approach deprives the military of the ability to consider what may be, in the context of certain applicants, a critical data point in determining the applicant's potential contribution as a military officer 32

III. Respondents' and the Military's Race Conscious Policies Are Constitutional 33

CONCLUSION 36

APPENDIX:

APPENDIX A: Short Biographies of *Amici Curiae* 1a

TABLE OF AUTHORITIES

CASES Page(s)

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INTEREST OF *AMICI CURIAE*

Amici, *see* Appendix, are thirty-six former military leaders.[1] Among other key defense posts, they include four Chairmen of the Joint Chiefs of Staff, two Army Chiefs of Staff, a Chief of Naval Operations, two Air Force Chiefs of Staff, two commanders of Special Operations Command, five military academy superintendents, a former U.S. Senator and Congressional Medal of Honor recipient, and the first female 4-star in the U.S. military. *Amici* see this case as critical to the Armed Forces' ability to defend our Nation's security, because that ability depends on an officer corps consisting of our best qualified, able, and racially diverse leaders. *Amici* collectively bring centuries of experience leading soldiers, sailors, airmen, and Marines in combat at the highest levels of military leadership. Their short biographies capture at most two or three highlights of their distinguished service to our country.

SUMMARY OF THE ARGUMENT

In *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411 (2013), thirty-seven former high-ranking officers and civilian leaders of the Army, Navy, Air Force, and Marine Corps filed an *amicus* brief, *see* Brief of Lt.

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[1] This *amicus* brief is filed with the parties' consent. Counsel for the parties have granted blanket consent for the filing of *amicus* briefs, compliant with this Court's Rule 37. Pursuant to Rule 37.6, the *amici* submitting this brief and their counsel represent that no party to this case or their counsel authored this brief in whole or in part, and that no person other than *amici* and their counsel paid for or monetarily contributed to the preparation or submission of this brief.

Gen. Julius W. Becton, Jr. et al., Fisher v. Univ. of Tex., 133 S.Ct. 2411 (2013) (No. 11-345) [hereinafter *Fisher I* military brief], explaining why a highly qualified, racially and ethnically diverse officer corps is essential to the effectiveness of the Armed Forces.[2] Those reasons set forth in the *Fisher I* military brief remain equally valid today.

In *Grutter*, Justice O'Connor, writing for the majority, stated:

> It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education. . . . We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.

539 U.S. at 343. History may prove Justice O'Connor's prediction prescient, but the day that racial preferences are no longer necessary to achieve student body diversity in the context of public higher education has not yet arrived. Recent events in our streets and schools suggest that modest, carefully tailored racial preferences are still necessary in university admissions offices. This need is especially critical to the military, which requires a diverse fighting force, and which also relies heavily on our Nation's universities for its officer corps. Congress and the President are charged

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[2] In *Grutter v. Bollinger*, 539 U.S. 306 (2003), a group of high-ranking military officers and civilian leaders also filed an *amicus* brief advancing many of the same arguments set forth here. *See* Consolidated Brief of Lt. Gen. Julius W. Becton, Jr. et al., Grutter v. Bollinger, 539 U.S. 306 (2003) (Nos. 02-241 & 02-516) [hereinafter *Grutter* military brief]. The arguments in the *Grutter* military brief are hereby incorporated.

with raising an Army and Navy. *See* U.S. CONST., art. I, § 8, cls. 12 & 13 and art. II, § 2, cl. 1, respectively. Complete disregard for race not only would interfere with that constitutional mandate, it also would adversely impact the efficiency and effectiveness of our Nation's fighting force, especially in modern warfare.

Unlike many institutions, the military promotes its leaders from within. Consequently, the demographic composition of entrants into the officer corps is crucial to achieving a racially and ethnically diverse officer corps. The Reserve Officer Training Corps ("ROTC"), comprised of students admitted to participating civilian colleges and universities, and the service academies are the primary sources for military officers. These sources devote substantial efforts and resources to recruiting minority candidates, and consider race, among the other factors, in making admissions decisions. However, ROTC cannot recruit minority candidates who are not first admitted as students. Therefore, university admissions policies, including those at the University of Texas at Austin ("UT"), determine the makeup of our officer corps. As was true when *Grutter* was decided, our military cannot achieve a racially diverse officer corps if universities are required to turn a blind eye toward race.

From the perspective both of those on the outside who see our troops in action and of those within our military, post-September 11, 2001 conflicts in Iraq and Afghanistan have reinforced the need for a qualified and racially diverse officer corps, and in turn, holistic admissions policies in public higher education. More so than before, the wars in Iraq and Afghanistan have required our military to perform a variety of civil-

military functions that called for increased cultural awareness and a greater sensitivity to some of the ethnic and religious issues underlying military conflicts—qualities enhanced by diverse leadership, and developed in a racially diverse educational environment. The Armed Forces also have realized that because elite military units in the post-September 11, 2001 era—such as the Army's Special Forces and Navy SEALS—require highly developed language skills, cultural awareness, and the ability to effectively work with foreign military and civilian personnel, enhanced operational capacity requires that these units fill their ranks with qualified and racially diverse officers and enlisted personnel.

This case focuses on university admissions, but the impact of its outcome will have real-world consequences. *Amici* respectfully submit that, in examining the constitutionality of UT's admissions policy, the Court can properly consider the military's interests, and the disruptive effect on the military's ability to defend our nation that would result from a ruling that precludes public institutions from considering race, as one of many factors, in admissions decisions.

UT's Brief explains how UT's admissions policy is carefully tailored in its consideration of race, and applies only to applicants not subject to automatic admission under the Texas Top 10% Law.[3] Brief for Respondent, at 9-10. As part of the holistic review of

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[3] Top 10% admittees are capped at 75% of the entering class, so the vast majority of enrollees never undergo the review challenged by Petitioner.

an applicant, UT awards a Personal Achievement Score ("PAS") based on an individualized review of six factors, one of which is "special circumstances." *Id.* In turn, the "special circumstances" factor consists of seven factors, of which race is one, making race one of seven factors considered within one of six PAS categories—truly a factor of factors. *Id.*

Amici respectfully submit that this factor of factors complements the one-dimensional approach to admissions ordained by the Texas Top 10% Law, thereby facilitating the military's ability to recruit a diverse and capable officer corps. Class rank, even if it were an adequate surrogate for scholastic achievement, which in many cases it is not, hardly captures all attributes of a leadership corps charged with, among other things, inspiring collaboration and unit cohesion among our racially diverse enlisted ranks and leading them in combat. Correctly identifying those having the right mix of qualities critical to outstanding military leadership requires an individualized assessment that class rank alone cannot provide. Racial diversity enriches our fighting force in all ranks and therefore should not be excluded when assessing eligibility for admissions to those colleges and universities with ROTC programs.

In *Grutter*, the Court validated the military's significant interest in both selectivity and diversity at its commissioning institutions. *See Grutter*, 539 U.S. at 331. Recognizing that national security interest enabled the Court to take the next step and validate the interest in selectivity and diversity for other major segments of our society, including institutions of higher

learning. *Id.* at 330-31, 343. The Court recognized that,

> [i]n order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training.

Grutter, 539 U.S. at 332.

Grutter is just as appropriate today as it was twelve years ago. Our military must be able to continue employing policies to recruit and educate a diverse officer corps to further the government's compelling interest in an effective military. The military also should be able to continue to draw highly qualified minority applicants from institutions of higher learning such as UT and applicants of all backgrounds who have been educated in a diverse learning environment. UT's painstakingly crafted admissions policy is central to the Nation's military mission.

ARGUMENT

I. Growing and Maintaining a Highly Qualified, Diverse Officer Corps Will Always Be A U.S. National Security Imperative.

As the *Grutter* military brief and the *Fisher I* military brief explained, the military's effectiveness as an institution depends on its ability to grow and maintain a diverse officer corps.

A. The U.S. military's commitment to racial diversity in its leadership grew out of many decades of experience.

The military has learned the importance of racial diversity in its leadership the hard way. President Truman integrated the military in 1948, making our military one of America's most integrated institutions. *See* Exec. Order No. 9981, 13 Fed. Reg. 4313 (July 28, 1948). Yet minority representation through the 1960s and 1970s was almost entirely in the enlisted ranks; the officer corps remained almost exclusively white. *See Grutter* military brief, at 13-14 (noting, for example, "In 1962, a mere 1.6% of all commissioned military officers were African-American," in stark contrast to the much larger percentages in the enlisted ranks). As the *Fisher I* military brief explains, a nearly all-white officer corps leading enlisted ranks heavily comprised of minorities created intense racial strife; hundreds of racial incidents and race-based violence erupted throughout the military. *Fisher I* military brief, at 6-7. "In 1969 and 1970 alone, the Army catalogued more than 300 race-related internal disturbances, which resulted in the deaths of seventy-one American troops." Bryan W. Leach, *Race as Mission Critical: The Occupational Need Rationale in Military Affirmative Action and Beyond*, 113 Yale L.J. 1093, 1111 (2004) (citing Bernard C. Nalty, STRENGTH FOR THE FIGHT: A HISTORY OF BLACK AMERICANS IN THE MILITARY 309 (1986)). *See Nalty*, at 309 ("These attacks came to be grouped under the category of 'fragging,' because the fragmentation grenade was a favorite tool of assassination.").

Bereft of minority officers for support and visible proof that our Armed Forces recognized them as valuable contributors, many black troops

lost confidence in the military. *See Grutter* military brief, at 16 & n. 5; *Nalty*, at 309. As the Military Leadership Diversity Commission ("MLDC"), an independent body commissioned by Congress in 2009 to assess diversity in military leadership, explained in its final report to Congress and the President,

> [d]uring the Vietnam War, the lack of diversity in military leadership led to problems that threatened the integrity and performance of the Nation's military. This is because servicemembers' vision of what is possible for their career is shaped by whether they see individuals with similar backgrounds excelling and being recognized in their Service.

From Representation to Inclusion: Diversity Leadership for the 21st-Century Military, *Final Report*, MIL. LEADERSHIP DIVERSITY COMM'N xvi (Mar. 15, 2011) [hereinafter *MLDC Report*] (internal citation omitted), https://www.hsdl.org/?view&did=11390. By the 1970s, racial tensions in the military ran so high that they actually caused the Armed Forces to teeter "on the verge of self-destruction." *Grutter* military brief, at 16 (quoting Charles C. Moskos & John Sibley Butler, ALL THAT WE CAN BE: BLACK LEADERSHIP AND RACIAL INTEGRATION THE ARMY WAY 142 (1996)). Years later, the U.S. Department of Justice reported to the President in its review of federal affirmative action

programs that "[r]acial conflict within the military during the Vietnam era was a blaring wakeup call to the fact that equal opportunity is absolutely indispensable to unit cohesion, and therefore critical to military effectiveness and our national security." *Review of Federal Affirmative Action Programs, Report to the President*, DEP'T OF JUST. § 7.5.1 (1995), http://clinton2.nara.gov/WH/EOP/OP/html/aa/aa07.html [hereinafter *Presidential Report*]. This trying experience shaped the military leadership's modern view that "success with the challenges of diversity is critical to national security." *Presidential Report*, at § 7.1. As one senior Pentagon official put it, "[d]oing affirmative action the right way is deadly serious for us—people's lives depend on it." *Id.*; *see MLDC Report*, at 39 ("[c]urrent and former military leaders have long argued that developing and maintaining qualified and demographically diverse leadership is critical for mission effectiveness" (internal citation omitted)).

B. The post-September 11, 2001 operational environment underscores the Nation's need for officer corps diversity.

The post-September 11, 2001 operational environment has increased the need for the qualified and racially diverse officer corps described in the *Grutter* military brief and the *Fisher I* military brief. Since September 2001, the military has recognized that in addition to military cohesion and perceptions of institutional legitimacy, both enhanced by a diverse officer corps, *see, e.g. Grutter*, 539 U.S. at 332, a racially diverse officer corps is also critical to the effectiveness of the military, because it is more likely to possess the cultural

sensitivity, diversity of experience and foreign-language skills necessary to succeed in today's wars.[4]

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[4] This brief examines diversity in the military context. However, existing research in other contexts demonstrates that diverse organizations are better positioned to solve complex problems, and that organizations led by diverse executive teams are more profitable than their more homogeneous counterparts. For example, researchers at the Michigan Business School examined the impact of diversity on group problem solving and found that:

> a random collection of agents drawn from a large set of limited-ability agents typically outperforms a collection of the very best agents from that same set. This result is because, with a large population of agents, the first group, although its members may have more ability, is less diverse. To put it succinctly, *diversity trumps ability*.

Lu Hong & Scott E. Page, *Groups of Diverse Problem Solvers Can Outperform Groups of High-Ability Problem Solvers*, PROCEEDINGS OF THE NAT'L ACAD. OF SCI., 16385, 16386 (2004), http://www.pnas.org/content101/46/16385.full (emphasis added). *But see* J. Hedtke, *Mathematicians Refute Oft-cited 'Diversity Trumps Ability' Study*, THE COLLEGE FIX (Dec. 5, 2014), http://www.thecollegefix.com/post/20375/ (describing criticism of research by Hong and Page, and providing Hong and Page response).

In 2012, McKinsey & Company examined the executive board demographics, returns on equity, and margins on earnings before interest and taxes of 180 publicly traded companies in the United States, France, Germany, and the United Kingdom to determine how diverse executive teams perform in comparison with more homogeneous executive teams. Thomas Barta et al., *Is There a Pay-off From Top-team Diversity?*, MCKINSEY Q. (Apr. 2012), http://www.mckinsey.com/insights/organization/is_there_a_payoff_from_top-team_diversity. The study found that companies with executive teams in the top quartile of diversity metrics (measured by the number of women and foreign nationals on senior teams (used as a proxy for cultural diversity)) obtained

Recent wars in Iraq and Afghanistan are illustrative, where military operational success depended largely upon the military leadership's ability to operate effectively with its foreign counterparts and to perform a variety of civil-military functions. Officers trained to lead soldiers into battle were called upon to administer basic services such as food, water, and medicine to impoverished Afghani and Iraqi citizens, conduct meetings and otherwise interact with tribal leaders to discuss basic governance issues, and perform a breathtaking array of other humanitarian and nation-building tasks. A highly qualified and racially diverse military officer corps, comprised of leaders fully comfortable and trained in a racially diverse academic environment, is far better able to manage these civil-military functions in regions where an understanding of, and ability to successfully navigate, pre-existing religious and ethnic tensions is inextricably intertwined with battlefield

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returns on equity 53% higher than companies with executive teams in the bottom quartile of diversity metrics. *Id.* These results reveal what business leaders have known for years:

> A diverse and inclusive workforce is necessary to drive innovation, foster creativity, and guide business strategies. ***Multiple voices lead to new ideas, new services, and new products, and encourage out-of-the-box thinking.*** Today, companies no longer view diversity and inclusion efforts as separate from their other business practices, and recognize that a diverse workforce can differentiate them from their competitors . . . .

Global Diversity and Inclusion: Fostering Innovation Through a Diverse Workforce, FORBES (July 2011), http://www.forbes.com/forbesinsights/innovation_diversity/index.html. The aforementioned data simply reinforces the premise that our Armed Forces—an entity comprised of substantial numbers of minorities tasked with solving complex problems in cross-cultural contexts—benefit from a more diverse officer corps.

success. *See* McFarland, Maxie, *Military Cultural Education*, MIL. REV. 62 (Mar.-Apr. 2005), http://www.au.af.mil/au/awc/awcgate/milreview/mcfarland.pdf (observing that "[o]ver the past decade the Army has increasingly engaged in lengthy overseas deployments in which mission performance demanded significant interface with indigenous populations" and that "engagement with local populaces has become so crucial that mission success is often significantly affected by soldiers' ability to interact with local individuals and communities"); *see also MLDC Report*, at xiv (noting that "[t]he ability to work collaboratively with many stakeholders, including international partners, will also be critical . . . and will require greater foreign-language, regional, and cultural skills").

Nowhere is the need for a qualified and diverse officer corps more urgent than in the elite Special Operations forces.[5] Recent policy decisions have resulted in the downsizing of the Armed Forces, but an

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[5] Race-conscious admissions programs not only provide the military with a broader base of minority college graduates to fill its officer ranks; such programs also benefit the enlisted ranks. Recent data reveals that the typical Special Forces soldier "is well educated, and is *likely to hold a college degree*." Witney Grespin, *The Quiet Professionals: The Future of U.S. Special Forces*, DIPL. COURIER (Sept. 20, 2013), http://www.diplomaticourier.com/the-quiet-professionals-the-future-of-u-s-special-forces/ (emphasis added); *see also* Daniella Diaz & Laura Konan, *10 Things You Might Not Know About U.S. Special Operations Forces*, CNN (Oct. 5, 2015, 6:06 PM), http://www.cnn.com/2015/10/05/politics/special-operations-forces-facts/ ("Special Operations isn't just about brawn—troops are also valued for their superior intelligence. They score better than average at the Armed Forces Vocational Aptitude Battery and many have college degrees." (emphasis added)). As such, holistic admissions programs also enhance the military's ability to recruit diverse and college-educated enlisted personnel.

increased role for Special Operations units such as Army Rangers, Navy SEALS, and Army Special Forces teams. *See* ANDREW FEICKERT, CONG. RESEARCH SERV. R42493, ARMY DRAWDOWN AND RESTRUCTURING: BACKGROUND AND ISSUES FOR CONGRESS 4 (Feb. 28, 2014), https://www.fas.org/sgp/crs/natsec/R42493.pdf (describing Department of Defense ("DoD") plan to reduce size of Active Army from "post-9/11 peak in 2010 of about 570,000 soldiers to 490,000 soldiers by the end of 2017," and "increased investments in special operations forces and their cyber domain"); Col. Mike Copenhaver, *The Integration of Minorities into Special Operations: How Cultural Diversity Enhances Operations* 8 (Jan. 3, 2014) (unpublished fellowship paper approved for public release, U.S. Army War College), http://nsfp.web.unc.edu/files/2012/09/FINAL-VERSION-AY14-CRP-COL-MIKE-COPENHAVER.pdf ("Budget reductions for the military as a whole suggest that Special Operators will likely have an appreciably different and more active role in the future."). These elite units conduct myriad operations that require diverse skills, including foreign language competency, knowledge of other cultures, and the ability to collaborate and even culturally empathize with vastly different kinds of people;[6] yet

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[6] On October 22, 2015, the *Wall Street Journal* reported that as many as thirty U.S. Special Operations soldiers conducted a joint operation with Kurdish Peshmerga to rescue seventeen Kurdish fighters held in a facility controlled by the Islamic State in Hawija, Iraq. *See* Gordon Lubold & Matt Bradley, *American Killed in Raid to Rescue Prisoners in Iraq*, WALL ST. J. (Oct. 22, 2015 2:33 PM), http://www.wsj.com/articles/american-killed-in-raid-to-rescue-kurdish-fighters-in-iraq-1445523452. The Americans provided aircraft, logistics, advice, and intelligence to their Kurdish counterparts. One American soldier was killed during the raid. Sharing battlefield responsibilities with allies renders this kind of partnership between Special Operations units and foreign counterparts common and essential in the modern era of warfare.

minority officers (and enlisted personnel) in Special Operations units are few and far between. In 1999, prompted by members of the U.S. House of Representatives concerned about "a significant underrepresentation of minorities in certain areas of [Special Operations Forces]," the RAND National Defense Research Institute conducted a comprehensive study of the demographics of Special Operations units. Margaret C. Harrell et al., *Barriers to Minority Participation in Special Operations Forces*, RAND CORP. xiii (1999),

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This kind of collaboration is particularly relevant to UT's holistic admissions policy, because, by virtue of the population of the state of Texas (which consists of a substantial number of first-generation Latin Americans), UT has the potential to educate, and, in turn, create a pool of talented Latin American leaders from which the Armed Forces may draw its future Special Operations officers. Drawing qualified Latin American officers (and enlisted personnel) from schools like UT is critical to the Armed Forces because U.S. Special Operations soldiers have been operating for years in Latin America, and will continue to do so in the future. *See* Mark Moyer et al., *Persistent Engagement in Colombia*, JOINT SPECIAL OPERATIONS UNIV. (July 2014), http://jsou.socom.mil/PubsPages/JSOU14-3_Moyar-Pagan-Griego_Colombia_FINAL.pdf (describing operations conducted by U.S. Special Forces units in Colombia); *see also The National Military Strategy of the United States of America 2015*, JOINT CHIEFS OF STAFF 9 (June 2015), http://www.jcs.mil/Portals/36/Documents/Publications/2015_National_Military_Strategy.pdf (noting that "the U.S. military is supporting interagency efforts with Latin American . . . states to promote regional stability and counter transnational criminal organizations"). Indeed, the U.S. Army has a Special Forces unit, the 7th Special Forces Group, whose primary area of responsibility is the Central and South America, as well as the Caribbean. UT's admissions policy may benefit units such as the 7th Special Forces group, by increasing the number of Latin American officers in its ranks, which may in turn increase its capacity to conduct operations alongside Latin American military units in the post-September 11, 2001 era.

http://www.rand.org/content/dam/rand/pubs/monograph_reports/2009/MR1042.pdf. The study revealed that in the Army Special Forces, 10% of the officers were minorities, while 18% of the officers in conventional units were minorities. *Id.* at 11.[7] Similarly, the study found that 6% of Navy SEAL officers were minorities, while 14% of Navy officers in conventional units were minorities. *Id.* Recent studies reveal that the trend continues. For example, at present, eight of 753 Navy SEAL officers are Black (or, 1%) and 4.5% of the Army's Special Forces officers are Black, *see* Tom Vanden Brook, *Pentagon's Elite Forces Lack Diversity*, USA TODAY (Aug. 6, 2015, 8:00 AM), http://www.usatoday.com/story/news/nation/2015/08/05/diversity-seals-green-berets/31122851/),[8] although recent data shows that roughly 5-7% of Navy officers are Black, and approximately 10-15% of Army officers are Black, *see* Gregg Zoroya, *Military Backslides on Ethnic Diversity*, USA TODAY (Feb. 14, 2014, 7:37 PM),

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[7] The study produced similar results for enlisted personnel. Specifically, the study revealed that 40% of the U.S. Army enlisted personnel were minorities, but merely 14% of Army Special Forces enlisted personnel were minorities; and that 30% of the enlisted Navy personnel were minorities, yet only 9% of Navy SEALS were minorities.

[8] Recent data suggest that the scarcity of minorities in elite units is not limited to Army Special Operations Units and Navy SEALS. In March 2015, U.S. Air Force Secretary Deborah Lee highlighted the dearth of minority pilots, stating that black airmen make up 6% of the officer corps in the Air Force, but only 2.3% of pilots. *See* Stephen Losey, *Air Force Secretary's Diversity Plan Will Mean Quotas, Critics Say*, AIRFORCE TIMES (Mar. 9, 2015, 1:24 PM), http://www.airforcetimes.com/story/military/careers/air-force/2015/03/09/air-force-secretary-deborah-lee-james-opportunities-women-minorities-and-enlisted-airmen/24505205/.

http://www.usatoday.com/story/news/nation/2014/02/17black-history-month-military-diversity/5564363/.

Modern Special Operations units have conducted numerous successful combat operations, yet as Navy SEALS have made clear, the homogeneity of their personnel limits their capacity: "[t]raditional SEAL Team demographics will not support some of the emerging mission elements that will be required." Mark Thompson, *Navy Seeking More Minority SEALS*, TIME (Feb. 24, 2012), http://nation.time.com/2012/02/24/navy-seeks-a-darker-shade-of-seals/ (noting that Navy SEALS are actively recruiting minorities, including Hispanic and Arab candidates). The current commander of U.S. Special Operations Command ("SOCOM"), General Joseph Votel, recently remarked "SOCOM needs diversity, we need people of color, we need men, we need women to help us solve the problems that we deal with today." Brook, *Pentagon's Elite Forces Lack Diversity*. Under these circumstances, diversity in the officer corps (and the Special Operations community at-large) is not merely a laudable goal—it is a strategic imperative. Race-based admissions programs, such as UT's, enable the Nation's finest institutions to recruit and educate minority leaders to fill these critical leadership roles in elite Special Operations units.

C. Recent events reinforce the military's need for a qualified, racially diverse officer corps that reflects the United States and our fighting force.

The current state of race relations within the Nation underscores the need for racial minorities in the military's officer corps. Following the *Fisher I* military brief, several tragic incidents have demonstrated that race relations in America have *declined*. Gallup polls show that between 2013 and 2015 public perception of race relations has declined substantially. In 2013, 72% of non-Hispanic Whites believed that relations between Whites and Blacks were "very good" or "somewhat good," whereas in 2015 this figure dropped to 45%. *Race Relations*, GALLUP, http://www.gallup.com/poll/1687/race-relations.aspx (last visited Oct. 22, 2015). Polling of Black Americans reveals a similar trend. In 2013, 66% of Blacks believed that relations between Blacks and Whites were "very good" or "somewhat good," but by 2015 this figure dropped to 51%. *Id.* One recent study indicates that 50% of the Nation believes that racism is a "big problem" today, whereas in 2009 only 26% of the country held that view. *Across Racial Lines, More Say Nation Needs to Make Changes to Achieve Racial Equality*, PEW RES. CTR. (Aug. 5, 2015), http://www.people-press.org/2015/08/05/across-racial-lines-more-say-nation-needs-to-make-changes-to-achieve-racial-equality/.

The *Grutter* military brief recounted the "painful lesson[]" the military learned during the Vietnam War—"that our diverse enlisted ranks rendered integration of the officer corps a military necessity." *Grutter* military

brief, at 17. The *Grutter* military brief explained that during this period "African-American troops, who rarely saw members of their own race in command positions, *lost confidence in the military as an institution*," *id.* at 16, and that "African-American servicemen concluded that the command structure had no regard for whether African-Americans would succeed in military careers," *id.* Recent events and reported public attitudes about racial relations help explain why recruiting and maintaining a diverse military corps as described in the *Grutter* military brief remains a vital national interest. Vestiges of mistrust and alienation held by the African-American community during the Vietnam War remain today, and underscore the lesson of times past: the legitimacy and effectiveness of our military as an institution in the eyes of minority service members and society at-large is directly related to the racial diversity of our military's leaders. *See* Tom Vanden Brook, *Army Commanders: White Men Lead a Diverse Force*, USA TODAY (Sept. 11, 2014, 4:39 PM), http://www.usatoday.com/story/news/nation/2014/09/11/army-officer-corps-dominated-by-white-men/14987977/ (Col. Irving Smith, Director of Sociology at the U.S. Military Academy at West Point, stating that "[i]n order to maintain their trust and confidence, the people of America need to know that the Army is not only effective but representative of them," and noting that "[d]iversity and equal opportunity . . . make[] the Army more effective"). Thus, as the Court stated in *Grutter*, "[i]n order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership" in public institutions of higher learning such as UT "be visibly open to talented and qualified individuals of every race and ethnicity" through holistic admissions programs. *Grutter*, 539 U.S. at 332.

Diversifying the officer corps also enhances the effectiveness of the military by breaking down stereotypes and promoting cross-racial understanding. As Justice Powell stated in *Regents of the Univ. of Cal. v. Bakke*, "the 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples." 438 U.S. 265, 312-13 (1978) (Powell, J., concurring) (quoting *Keyishan v. Bd. of Regents*, 385 U.S. 589, 603 (1967)). Both minority *and* non-minority military officers educated in this way in public colleges and universities are better prepared to handle the challenges of leading a racially, culturally, and socio-economically diverse military force. Minority military officers who have shown the ability to succeed in an integrated educational setting are often capable of succeeding as leaders in today's multi-racial military. Recent events merely reinforce the military's need for minority officers capable of leading today's Armed Forces, as well as non-minority officers exposed to the "ideas and mores" of a racially diverse military.

D. The military has made significant strides towards growing a highly qualified and a racially diverse officer corps, but considerable work remains.

As explained above, spurred by the lessons from the Vietnam era, our military's commitment to achieving a racially diverse officer corps is stronger today than ever before. At the service academies and ROTC—the primary sources of military officers—that ongoing

commitment is demonstrated by recruiting initiatives that have produced notable results, and must continue in order to ensure a reliable and steady stream of top qualified and diverse officers.

Our military academies provide tuition-free, four-year undergraduate education and prepare entrants to be officers. Graduates are commissioned as officers for a minimum of five years of military service. Each academy annually admits 1,100 to 1,350 entrants; this has remained consistent over time and across the academies. Sheila Nataraj Kirby et al., *Diversity of Service Academy Entrants and Graduates*, RAND CORP. xvii (2010), http://www.rand.org/content/dam/rand/pubs/monographs/2010/RAND_MG917.pdf [hereinafter *Diversity of Service Academy Entrants*]. In fiscal year 2013, DoD reported that approximately 15% of all officers came from the service academies. *Population Representation in the Military Services: Fiscal Year 2013 Summary Report*, DEP'T OF DEF. tbl. B-31 (2013), https://cna.org/pop-rep/2013/appendixb/appendixb.pdf [hereinafter *Population Representation 2013*].

ROTC programs are offered at over 1,100 colleges and universities, *see Army ROTC: Ways To Attend*, U.S. ARMY, http://www.goarmy.com/rotc/ways-to-attend.html (last visited Oct. 25, 2015), including UT.[9] ROTC provides military education and training and also, for a

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[9] UT has been an ROTC-participating university for decades; in particular, the Army ROTC program at the university has been in place for over 50 years. UT hosts ROTC programs for the Army, Navy and Air Force, the sum of which is approximately 200 students. Each

subset of all ROTC participants, scholarships to candidates admitted to host colleges or universities. The scholarships include full tuition for up to four years in exchange for a five-year post-graduation commitment to serve in the military. In fiscal year 2013, DoD reported that approximately 37% of its active component officers were commissioned through ROTC. *Population Representation 2013*, tbl. B-31. Notably, ROTC provided 50.7% of the officer corps of the Army (the largest of the services) and 42.4% of the officer corps of the Air Force in 2013. *Id.*

1. The military's strong commitment to officer diversity includes initiatives to increase minority applications and accessions to officer commissioning institutions.

Although each service has its own unique programs and practices to achieve and maintain a highly qualified and racially diverse officer corps, the services share a number of strategies. *See MLDC Report*, at 53. Those efforts include initiatives to retain and support minorities into the upper ranks of the officer corps. *See, e.g.*, *id.* at 75-88. This brief focuses on the initial accessions; *i.e.*, the efforts to expand the pool of minority officer applicants

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of the programs has achieved recognition for excellence, and consists of students whose grade point average exceeds that of the university at-large.

to the military's commissioning institutions and to increase minorities' presence in the officer ranks.

a. Outreach and Recruiting.

The military is engaged in multiple initiatives in its outreach and recruiting of minority officer candidates. Each service branch has organizational divisions or offices specifically devoted to recruiting members of demographic groups underrepresented in the military officer corps. *Id.* at 53. The services pursue connections with community leaders and participate in affinity group events that include highly qualified minority candidates, such as events by the National Society of Black Engineers and the Society for Advancement of Chicanos and Native Americans in Science. *Id.* They strategically establish ROTC programs and academic scholarships at Historically Black Colleges and Universities ("HBCUs") and Minority-Servicing Institutions, *id.* at 54, conduct targeted advertising at HBCUs and Minority-Serving Institutions, and use media channels directed at diverse audiences. *Id.* at 53.

As described in the *Grutter* military brief, the U.S. Military Academy ("USMA" or "West Point") was the first service academy to succeed in increasing minority representation. *See Grutter* military brief, at 18. In 1968, there were thirty African-American cadets at USMA; that number grew to almost 100 by 1971. *Id.* A recent DoD-commissioned study on the subject reports that the percentage of minorities at West Point increased from 16% in the 1992-94 classes to 23% in the 2007-09 classes. *Diversity of Service Academy Entrants*, at 28-29.

Today, one of West Point's primary minority recruitment tools is Project Outreach, which seeks to identify and nurture through the admissions process talented minority candidates with the ultimate goal of matriculating them to West Point. *Id.* at 85. Under this program, "recent West Point graduates spend a 13-month tour traveling extensively throughout selected U.S. regions to identify and nurture candidates." *Id.* Other major recruiting programs include a visitation program for prospective recruits who visit West Point and the USMA Prep School; "metropolitan blitzes," bringing outreach and minority admissions officers to one city; representatives of West Point visit with the Congressional Black and Hispanic Caucuses to set up academy days and place cadets as interns in local and Washington, D.C., offices; activating minority cadets for hometown and academy visits; and the Cadet Calling Program, whereby current cadets connect with candidates by phone. *Id.* at 85-86.

The U.S. Naval Academy ("USNA") is also keenly focused on racial and ethnic diversity. It lists as one of its strategic objectives to "[s]trengthen the Academy's outreach and recruiting efforts to attract and admit individuals of diverse backgrounds with potential for success at USNA and in the Fleet and Marine Corps." *Leaders to Serve the Nation: U.S. Naval Academy Strategic Plan 2020*, U.S. NAVAL ACAD. 8 (2010), http://www.usna.edu/StrategicPlan/_files/docs/USNA-Strategic-Plan.pdf. As one DoD-commissioned study reports, "[t]he Superintendent of the Naval Academy stated that his number one goal for his tenure is to improve diversity." *Diversity of Service Academy Entrants* at 88; *see Naval Academy Wooing Minorities*, WASH. TIMES (Aug. 23, 2008), http://www.washingtontimes.com/news/2008/aug/23/naval-academy-wooing-minorities/. Towards that end, the academy has created a

diversity office, led by a senior naval officer, to coordinate all diversity efforts. *Diversity of Service Academy Entrants*, at 88.

The U.S. Air Force Academy ("USAFA") likewise provides a wealth of examples demonstrating the military's ongoing commitment to diversity. Its recent diversity plan provides among its guiding principles to "[e]stablish self-sustaining programs that identify diverse candidates" and to "[a]ttract highly qualified, diverse candidates to the cadet wing." *Id.* at 86-87.

b. Limited Use of Race-Conscious Admissions.

Our Armed Forces' steadfast commitment to diversity is also manifest in its continued use of modest race-conscious admissions policies to increase minority enrollment at the service academies and in ROTC.

Similar to UT's admissions policy, the service academies employ an individualized, "whole person" approach to evaluate applicants. In the most recent detailed government report on the subject, the U.S. Government Accountability Office ("GAO") describes the process, in part, as follows:

> The academies do not grant waivers from academic criteria but do not have absolute minimum scores for admission. Under the whole person approach, the academies can admit some applicants whose academic scores are lower than might normally be competitive for admission, but who in their totality (academics, physical aptitude, and leadership potential) are deemed an acceptable risk and qualified to attend an academy. This admissions approach is consistent with the intent of the academies to admit students who also

> demonstrate leadership and initiative characteristics, which cannot be quantified by purely objective scoring methods. . . . The subjective nature of this approach is consistent with the intent of the whole person concept . . . .

U.S. GOV'T ACCOUNTABILITY OFF., GAO-03-1000, MILITARY EDUCATION: DOD NEEDS TO ENHANCE PERFORMANCE GOALS AND MEASURES TO IMPROVE OVERSIGHT OF MILITARY ACADEMIES 19-20 (2003), http://www.gao.gov/assets/240/239612.pdf.

More recent statements from the academies confirm their ongoing use of this approach. For example, USMA notes that "[a]dmission to West Point is open to all students. There are no appointments, vacancies, or nominations designed exclusively for minority groups. However, cultural and socio-economic backgrounds are given appropriate consideration while evaluating all applicants." *West Point Admissions*, U.S. MIL. ACAD., http://www.usma.edu/admissions/SitePages/FAQ_Admission.aspx (last visited Oct. 28, 2015).

Finally, ROTC also employs the whole person approach of individualized review of its scholarship applicants (who already are admitted students at participating colleges and universities), assessing academic aptitude, physical fitness, and leadership abilities. *See, e.g.*, Anny Wong et al., *The Use of Standardized Scores in Officer Career Management and Selection*, RAND CORP. 13 (2012), http://www.rand.org/content/dam/rand/pubs/technical_reports/2012/RAND_TR952.pdf (DoD-commissioned report noting ROTC "[a]dmission boards consider the candidate's qualifications broadly using the whole-person concept, which includes a combination of test scores, academic background, athletic accomplishments, field of study in college, and other personal qualities.").

2. Results to date of the military's initiatives.

The *Fisher I* military brief explained how the military's initiatives have yielded higher minority participation at both the service academies and in ROTC, and to date, this trend continues. However, as was true in 2012, a substantial gap remains between active duty enlisted personnel and the military officer corps.

Some 1.4 million soldiers serve in the active duty forces today, of whom approximately 69.3% identified as white, 17% as African American, 3.8% as Asian, 1.4% as American Indian or Alaskan, 1% as Native Hawaiian or Other Pacific Islander, and 3.1% as "multi-racial." *2013 Demographics of the Military Community*, DEP'T OF DEF. 21 (2013), http://download.militaryonesource.mil/12038/MOS/Reports/2013-Demographics-Report.pdf. From the Vietnam era, when minorities were almost nowhere to be found in the officer ranks, *see Grutter* military brief, at 5, 6 n. 2, 17, by fiscal year 2013, of the total officer corps, Blacks comprised 9.4%, Asians 4.4%, American Indians 0.6%, and Native Hawaiian and Pacific Islanders 0.5%. *Id.*

A look at minority participation at the academies shows the increases even more dramatically. The most recent classes entering the USNA were the most racially diverse in history, with a 35% minority representation. *Major Diversity Initiatives*, U.S. NAVY, http://www.public.navy.mil/asnmra/diversityandinclusion/Pages/usn/DiversityInitiatives.aspx (last visited Oct. 28, 2015). Similarly, the USAFA class of 2017 boasted approximately 30% minority enrollees. *USAFA Quick Facts*, U.S. AIR FORCE ACAD. (May 23, 2014), http://www.usafa.af.mil/information/factsheets/factsheet.asp?id=21371. Of the USMA class of 2018, approximately 33% are minorities. *Class of 2018 to*

Enter West Point, U.S. MIL. ACAD. (June 23, 2014), http://www.usma.edu/news/Shared%20Documents/Class%20of%202018%20to%20Enter%20West%20Point.pdf.

These advances are important, but military leadership recognizes that significant challenges remain. "Although military accessions of women and minorities have increased over time, the proportions of these groups in the senior officer corps remain relatively low." Beth J. Asch et al., *A New Look at Gender and Minority Differences in Officer Career Progression in the Military*, RAND CORP. ix (2012), http://www.rand.org/content/dam/rand/pubs/technical_reports/2012/RAND_TR1159.pdf [hereinafter *RAND Career Progression*]. *See also* Nelson Lim et al., *Officer Classification and the Future of Diversity Among Senior Military Leaders: A Case Study of the Army ROTC*, RAND CORP. xi (2009), http://www.rand.org/content/dam/rand/pubs/technical_reports/2009/RAND_TR731.pdf [hereinafter *Officer Classification*]. As the MLDC reports, "*military officers today are less demographically diverse than both the enlisted troops they lead and the broader civilian population they serve.*" *MLDC Report*, at 39 (emphasis in original). The MLDC concluded, "Despite undeniable successes, however, the Armed Forces have not yet succeeded in developing a continuing stream of leaders who are as diverse as the Nation they serve." *Id.* at vii.

These shortcomings are serious. As discussed in the *MLDC Report*, "[t]he importance of increasing racial/ethnic and gender representation within the military has also been a specific priority of senior military leaders and is argued to be critical to mission effectiveness." *MLDC Report*, at 39 (citation omitted). The problem is of "ongoing concern within the Department of Defense." *RAND Career Progression*, at 1. A

DoD-commissioned study reports that in response to a 2005 directive from then Secretary of Defense Donald Rumsfeld to "put much more energy into achieving diversity at senior levels of services," a diversity summit was convened between private and public sector diversity experts with DoD representatives. Nelson Lim et al., *Planning for Diversity*, RAND CORP. 2 (2008), http://www.rand.org/content/dam/rand/pubs/monographs/2008/RAND_MG743.pdf (internal quotation omitted). The summit participants concluded that

> as an organization that promotes from within, DoD's top leadership is dependent upon the pipeline of junior officers. Looking at this pipeline, they found no prospect for an increase in the representation of minorities or women in the higher ranks (flag officers and Senior Executive Service [SES] members) for the next decade. In other words, labor force trends will not cause an increase in minority senior leaders without some kind of policy intervention, and the divergence between the general population and those in charge of the military is likely to worsen if nothing is done.

Id., at 3. The *MLDC Report* described the challenge as follows: "One need only remember the popular perceptions of racial/ethnic minorities serving as 'cannon fodder' for white military leaders in Vietnam to understand how important ethnic, racial, and gender representation is to the psychological well-being and reputation of the U.S. military." *MLDC Report*, at 15 (citation omitted). Indeed, the MLDC provided detailed and robust policy recommendations for DoD leadership to address this threat to military effectiveness. *See id.* at 117-18, 125-30.

Grutter confirmed that if race is totally ignored, no means exist for the military to fulfill its mission to achieve officer diversity.

II. Invalidating UT's Modest Race-Conscious Admissions Policy Would Seriously Disrupt the Military's Efforts to Maintain Military Cohesion and Effectiveness.

A. Our military has a vital interest in admissions policies that directly affect the ROTC, a linchpin for the Nation's incoming military officers.

While this case focuses on university admissions policies, its outcome will affect the military's ability to achieve and maintain a diverse officer corps. As stated above, ROTC remains the military's primary source of officers. But students must already be admitted to a college or university to be eligible for ROTC. Invalidating modest admissions policies such as UT's would therefore cut the pool of highly qualified minorities otherwise eligible for ROTC.

This is no small matter. In fiscal year 2012, ROTC was the source of 48% of the Army's officers, with the Army being the largest of the service branches. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-14-93, MILITARY PERSONNEL: ACTIONS NEEDED TO IMPROVE EVALUATION AND OVERSIGHT OF RESERVE OFFICERS' TRAINING CORPS PROGRAMS 5 (2013), http://www.gao.gov/assets/660/658996.pdf.[10] Moreover, ROTC is the primary source for

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[10] Approximately 25% of the Army's officers are graduates of the service academies and approximately 27% are graduates of Officer Candidate School or Officer Training School graduates. *Id.* *See generally*, Jenna Johnson, *Army ROTC Steadily Grows on College Campuses, Including Virginia Tech*, WASH. POST (Nov. 6, 2012), https://www.washingtonpost.com/local/education/army-

minority officers in the Army: approximately 56% of all Black officers and 62% of all Hispanic officers obtained their commission through ROTC in 2013. *See Population Representation 2013*, at T.B-32. Thus, our Army depends on ROTC for almost half of its officers and over half of its minority officers. Invalidating individualized admissions at ROTC-participating colleges and universities such as UT and reducing the critical mass of highly qualified minority candidates they seek to assemble would capsize an effort by the Armed Forces that has been ongoing since the Truman Administration.

As explained above, the post-September 11, 2001 world has reinforced our military's recognition that the ability to lead diverse groups of people and to collaborate well with people of different cultures constitute invaluable military leader attributes. *See also MLDC Report*, at 17 (noting skills needed for modern warfare, including ability to work with international partners). As the Army's Diversity Roadmap explains it:

> [t]oday's security environment demands more from our military and civilian leaders than ever before. . . . The unconventional and asymmetrical battlefields of the future mean we must understand people and the environments where they live. A more adaptive and culturally astute Army will enhance our ability to operate in these environments. Training, educating and preparing culturally adaptive leaders, able to meet global challenges because of their ability to understand varying cultures,

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rotc-steadily-grows-on-college-campuses-including-virginia-tech/2012/11/06/c738f906-242a-11e2-9313-3c7f59038d93_story.html.

> will continue to help the Army achieve mission readiness.

United States Army Diversity Roadmap, DEP'T OF THE ARMY 3 (Dec. 2010), http://www.armydiversity.army.mil/document/Diversity_Roadmap.pdf. The Army further explains:

> We derive strength from the cultures, perspectives, skills and other qualities of our personnel. The 21st-Century Army is transforming into a versatile, agile Force where knowledge of the battle space is crucial. Soldiers and Army Civilians must now add to our toolboxes not only a cultural understanding of the populations in which we may be deployed, but also a better grasp of the many characteristics and backgrounds in our own formations.

Id., *Message from the Secretary, Chief of Staff and Sergeant Major of the Army*.

Colleges and universities whose student bodies are diverse across various matrices, including race and ethnicity, are more likely to produce graduates who possess the skills necessary to be an effective military leader. Being educated in a diverse environment and being exposed to different kinds of people in one's formative years facilitates the development of the ability to work collaboratively with others notwithstanding racial, cultural, linguistic or other differences. Justice Powell's view in *Bakke*, embraced by this Court in *Grutter*, is particularly true for the military: "[N]othing less than the 'nation's future depends upon leaders trained through wide exposure to the ideas and mores of students as diverse as this Nation of many peoples.' " *Grutter*, 539 U.S. at 324 (quoting *Bakke*, 438 U.S. at 313 (Powell, J.) (internal quotation omitted)). Removing a pool of racially diverse

college graduates educated in a diverse environment jeopardizes the number of such desirable candidates available—and thus the potential for a "visibly open" pathway, *Grutter*, 539 U.S. at 332,—for such candidates into the officer corps through ROTC. Invalidating admissions policies at public universities that take a holistic approach to assessing applicants, such as UT, would eradicate the military's ability to recruit the racially diverse officers necessary to meet the demands of modern warfare.

B. A robotic top-ten percent class rank approach deprives the military of the ability to consider what may be, in the context of certain applicants, a critical data point in determining the applicant's potential contribution as a military officer.

A sweeping rule barring UT's narrowly tailored individual review process would undermine our military's ability to recruit the most competent officer corps possible. As respondents explain, the racial and ethnic diversity achieved by the Texas Top 10% Law is mostly a product of the fact that Texas public high schools remain highly segregated by race. As the Court recognized in *Grutter*, "even assuming such [class rank] plans are race-neutral, they may preclude the university from conducting the individualized assessments necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the university." 539 U.S. at 340.

Embracing a pure class-rank admissions approach blinded to any other factor that would become evident from an individualized review, including race, would

deprive the military of its leadership needs. Strong academics are, of course, very important, but is only one of the many criteria essential to developing capable military officers. Beyond the numerous basic eligibility requirements for military service such as height, weight, physical fitness, overall health, and, for officers, U.S. citizenship, other attributes are also vital—attributes such as leadership potential and character. *MLDC Report*, at 47. These aspects of an admissions application simply cannot be assessed under a rule where admission is guaranteed based only on class rank, as these attributes by definition require subjective, individualized assessment to discern. To further the military's goal of filling its ranks with the most capable military leaders, public universities and military academies must be able to consider race as part of their calculus in the admissions process. A rule prohibiting the consideration of race, among many other factors, in admissions would deprive the military of outstanding officer candidates and hinder the military's ability to assemble the very best officer corps to lead America's military.

III. Respondents' and the Military's Race Conscious Policies Are Constitutional.

This Court has confirmed that racial and ethnic diversity is a compelling state interest of public colleges and universities. *Grutter*, 539 U.S. at 328. In *Grutter*, the Court also consciously upheld its tradition of giving a degree of deference to universities' academic decisions, within constitutionally prescribed limits, finding that a university's "educational judgment that such diversity is essential to its education mission is one to which we defer." *Id.* Relying in part on the military experience detailed in the *Grutter* military brief, the *Grutter* Court agreed that like selective military institutions,

elite civilian institutions also "must remain both diverse and selective." *Id.* at 331.

The analysis is no different here. As the *Grutter* military brief and the *Fisher I* military brief explain, the military, based on decades of experience, has determined that a highly qualified and racially diverse leadership is mission-critical. Its overall effectiveness as an institution and thus its ability to protect our Nation's security hinge on it developing and maintaining a highly qualified and diverse officer corps. While "military interests do not always trump other considerations," the Court does "give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24-26 (2008) (internal quotation and citation omitted). The military's long-standing and strongly held view, developed over decades of hard experiences, is that a highly qualified and racially diverse officer corps is critical to military effectiveness and indispensable to our Nation's security. *Amici* respectfully submit that this military judgment deserves deference from the Court. This is particularly so where, as here, the military interest is inextricably tied to its ability to protect the Nation.

Currently, no workable alternative yet exists to the military's limited use of race as a factor in admissions policies to fulfill its compelling need for selectivity and diversity in its officer corps. Class rank, while significant, alone cannot answer the military's critical need for racially diverse leadership in today's operational environment. In contrast, the tailored, "whole person" approach UT applies, complementary to the Texas 10% Law, is critical in achieving a highly qualified pool of officer candidates.

Nor is a directive to our military to try harder in its recruitment efforts to achieve its diversity goals an answer. As detailed above and in the *Grutter* military brief, the military has made and continues to make extensive investments of energy and resources to expand the pool of highly qualified minority officer applicants. However, outreach and recruiting alone are insufficient to fulfill the national security interest in achieving a qualified and racially diverse officer corps. Admissions policies play an important role. The military needs the flexibility to engage in efforts that go beyond outreach and recruiting to achieve critical officer diversity. Because ROTC continues to be our primary source for military officers, and universities stand as the only gate for all ROTC candidates, the national security interest in university admissions policies is patently clear.

UT's admissions policy has been carefully crafted and is critically important to our military. The benefits of an individualized admissions approach apply not only to UT, but to every one of the other 1,100 institutions of higher education in America today that offer an ROTC program. As *Grutter* affirmed, "[i]n order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity." *Grutter*, 539 U.S. at 332. *Amici* respectfully urge this Court, once again, to take that "small step from this analysis to conclude that our country's other most selective institutions must remain both diverse and selective." *Id.* at 331.

CONCLUSION

The court of appeals correctly confirmed the constitutionality of UT's admissions policy under existing precedent, including *Grutter*. The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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November 2, 2015

APPENDIX

APPENDIX

SHORT BIOGRAPHIES OF *AMICI CURIAE*

Lieutenant General Julius W. Becton, Jr., 40-year U.S. Army veteran; Superintendent, Washington, D.C. Public Schools (1996-1998); President, Prairie View A&M University in Texas (1989-1994).

General John P. Abizaid, retired 4-star U.S. Army; Commander, U.S. Central Command (2003-2007); Distinguished Chair, Combating Terrorism Center at the U.S. Military Academy at West Point (2007-present).

Admiral Dennis C. Blair, retired 4-star U.S. Navy; Director of National Intelligence (2009-2010); Commander in Chief, U.S. Pacific Command (1992-02). Rhodes Scholar.

General Bryan Doug Brown, retired 4-star U.S. Army; Commander, all U.S. Special Operations Forces (2003-2007).

General George W. Casey, retired 4-star U.S. Army; 36th Chief of Staff of the U.S. Army (2007-2011); Commanding General Multi-National Force, Iraq (2004-2007); Director, Georgetown University Board of Directors; Distinguished Senior Lecturer of Leadership, Cornell University.

Lieutenant General Daniel W. Christman, Superintendent, U.S. Military Academy at West Point (1996-2001).

General Wesley K. Clark, retired 4-star U.S. Army; Supreme Allied Commander, Europe (1997-2000); Commander in Chief, U.S. Southern Command (1996-1997).

Admiral Archie Clemins, retired 4-star U.S. Navy; Commander in Chief, U.S. Pacific Fleet (1996-1999), the world's largest combined-fleet command.

General Ann E. Dunwoody, retired 4-star, Commanding General, United States Army Material Command (2008-2012); first female 4-star in the U.S. Military.

General Ronald R. Fogleman, retired 4-star U.S. Air Force; Chief of Staff (1994-1997); Commander in Chief of U.S. Transcom (1992-1994).

Admiral Edmund P. Giambastiani, Jr., retired 4-star U.S. Navy; Seventh Vice Chairman of the Joint Chiefs of Staff (2005-2007); NATO Supreme Allied Commander, Transformation (2003-2005); Commander, U.S. Joint Forces Command (2002-2005).

General Ronald H. Griffith, retired 4-star U.S. Army; Vice Chief of Staff (1995-1997), Army Inspector General (1991-1995).

General James T. Hill, retired 4-star U.S. Army; U.S. Southern Command (2002-2004).

Admiral Bobby Inman, retired 4-star U.S. Navy; University of Texas at Austin LBJ Centennial Chair in National Policy (2000-present); Deputy Director, Central Intelligence Agency (1981-1982).

General John P. Jumper, retired 4-star U.S. Air Force; Chief of Staff (2001-2005); Commander, Air Combat Command (1999–2001); Commander, U.S. Air Forces in Europe (1997–1999); Vice President, VMI Board of Visitors.

General John ("Jack") M. Keane, retired 4-star U.S. Army; Vice Chief of Staff (1999-2003); currently Chairman of the Board, Institute for the Study of War.

Senator Joseph Robert ("Bob") Kerrey, Congressional Medal of Honor recipient, U.S. Navy SEAL, special forces; President of New School University (2001-2011); U.S. Senator (1989-2001); Nebraska Governor (1983-1987).

Lieutenant General William J. Lennox, Jr., Superintendent, U.S. Military Academy at West Point (2001-2006).

General Lester L. Lyles, Jr., retired 4-star U.S. Air Force; Commander, Air Force Material Command (2000-2003); Vice Chief of Staff, U.S. Air Force (1999-2000).

General David M. Maddox, retired 4-star U.S. Army; Commander in Chief, U.S. Army Europe (1992-1994); Commander, NATO Central Army Group (1992-1993).

General Robert Magnus, retired 4-star U.S. Marine Corps; Assistant Commandant, U.S. Marine Corps (2005-2008); Chairman, U.S. Marine Corps Scholarship Foundation (2009-2011).

Admiral Michael G. Mullen, retired 4-star U.S. Navy; 17th Chairman of the Joint Chiefs of Staff (2007-2011); 28th Chief of Naval Operations (2005-2007).

General Richard B. Myers, retired 4-star U.S. Air Force, 15th Chairman of the Joint Chiefs of Staff (2001-2005); Commander in Chief North American Aerospace Defense Command (1998-2000).

General Richard I. Neal; retired 4-star U.S. Marine Corps; Assistant Commandant, U.S. Marine Corps (2005-2008); Chairman, U.S. Marine Corps Scholarship Foundation (1996-1998).

Lieutenant General Tad J. Oelstrom, Director, National Security Program, Kennedy School of Government, Harvard University (1998-present); Superintendent of the U.S. Air Force Academy (1997-2000). Rhodes Scholar.

General Colin L. Powell, retired 4-star U.S. Army; 65th U.S. Secretary of State (2001-2005); 12th Chairman of the Joint Chiefs of Staff (1989-1993); Commander, U.S. Army Forces Command (1989); National Security Advisor (1987-1989).

Admiral Joseph W. Prueher, retired 4-star U.S. Navy; U.S. Ambassador to China (1999-2001); Commander in Chief, U.S. Pacific Command (1996-1999); 73rd Commandant of Midshipmen, U.S. Naval Academy (1989-1991).

Honorable Joe R. Reeder, 14th Under Secretary of the Army (1993-1997), had oversight responsibility for admissions criteria for West Point and all university ROTC programs. West Point graduate.

Lieutenant General John F. Regni, Superintendent, U.S. Air Force Academy (2005-2009); Commander, Air University (2004-2005); Commander, 2nd Air Force (2000-2004).

Vice Admiral Ann E. Rondeau, President National Defense University (2009-2012); Commander, Navy Personnel Development command (2004-2005); Commander, Naval Services Training Command (including all ROTC programs) (2000-2004); 2nd Battalion Officer Naval Academy & Member, Board of Admissions (1990-1993).

Vice Admiral John R. Ryan, Chancellor, State University of New York (2005-2007); Superintendent U.S. Naval Academy (1998-2002).

General Thomas A. Schwartz, retired 4-star U.S. Army; Commander in Chief, United Nations Command and Combined Forces Command, Republic of Korea (1999-2002).

General Henry H. Shelton, retired 4-star U.S. Army; 14th Chairman of Joint Chiefs of Staff (1997-2001); Commander in Chief, U.S. Special Operations Command (1996-1997).

General Gordon R. Sullivan, retired 4-star U.S. Army; Army Chief of Staff (1991-1995); overall responsible for organizing and training over 1 million active duty Guard, Reserve and civilian members; President, Association of the United States Army ("AUSA") (1998-present).

General John H. Tilelli, Jr., retired 4-star U.S. Army; Commander in Chief, United Nations Command and Combined Forces Command, Republic of Korea (1996-1999); Commanding General, U.S. Army Forces Command (1995-1996); Army Vice Chief of Staff (1994-1995).

General Johnnie E. Wilson, retired 4-star U.S. Army; Commanding General, United States Army Material Command (1996-1999).